

Boston later advised his supervisor that he had rewritten the citation. In Ponceroff's opinion, if Emery denied access to a representative of the International UMWA claiming the right to enter under § 103(f), then such a denial constituted a violation of the Act (Tr. 312). A violation would also occur if the company refused access conditioned upon the signing of a release and waiver (Tr. 313, 325). However, if a representative of miners does not act in an orderly fashion or hinders the inspection in any manner, he would be asked to leave and someone else would be selected (Tr. 326).

After April 15 no person employed by Emery indicated that Rabbitt should not be considered as a representative of the miners at the mines (Tr. 326). On the Part 40 filing form the UMWA is one of the organizations named as a representative of the miners (Tr. 326, 327; Contestant Ex. 7).

Witness Ponceroff testified concerning situations where disputes might arise over different individuals claiming to be representative of the miners (Tr. 327, 328).

Ponceroff's duties include enforcement of MSHA's regulations under 30 C.F.R. Part 40. The Part 40 regulations require representatives of miners to make certain designations and file certain documents with the MSHA District Manager (Tr. 314).

On July 30, 1984 a Part 40 document was filed with MSHA's Orangeville office (Tr. 315, 316; Contestant Ex. 7). The document received in evidence was the most recent on file and it identifies for MSHA the representatives at the various mines (Tr. 316, 317). Boston's call of April 15 did not inquire as to the name of the individual who was listed as a representative of the miners at the Deer Creek mine (Tr. 318). The form designates who will represent the miners under various sections of the Act (Tr. 322, 323).

The parties stipulated that UMWA international representative Rabbitt was not listed as a named delegate on any filing under Part 40 associated with any of the Emery mines (Tr. 323).

Ponceroff did not recognize the name of any UMWA international representative on the Part 40 form (Tr. 324). Nor did he look at the filing made by the Deer Creek miners (Tr. 324).

John W. Barton, called as an adverse witness, testified as to his education and experience in mining. He further identified himself as the district manager of District 9 for Coal Mine Health and Safety (Tr. 330, 344, 345). He is responsible for the total administration of the Act. He has 110 employees and four primary divisions including administrative, education and training (a consultant service to industry), an engineering service to industry, and an enforcement division (Tr. 342-343).